

STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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OPINION OF THE PUBLIC ACCESS COUNSELOR

KAYLA MOODY,)	
Complainant)	
v.) 17-FC-43	
ORANGE COUNTY SHERIFF'S DEPT.)	
Respondent	,)	

ADVISORY OPINION March 22, 2017

This advisory opinion is in response to the formal complaint alleging the Orange County Sheriff's Dept. ("Sheriff") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. The Sheriff has responded via Ms. Marilyn Tucker Fullen, Esq. The response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 27, 2017.

BACKGROUND

The formal complaint dated February 26, 2017, alleges the Sheriff violated the APRA by failure to respond to a request in a timely manner. The Complainant filed a request for documents on November 1, 2016 related to a jail escape. The Sheriff acknowledged the request on November 2, 2016, but as of the date of the filing of the formal complaint, the Sheriff had not responded any further.

The Sheriff responded to the complaint by providing a letter to the Complainant dated March 7, 2017, wherein the Sheriff denied the request stating several of the records do not exist. The remainder of the request was denied for discretionary reasons.



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ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See Indiana Code § 5-14-3-1*. The Orange County Sheriff's Department is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Sheriff's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A public agency has a reasonable time under Indiana Code S 5-14-3-3 to produce records pursuant to a request. In the present case, nearly five (5) months had elapsed between the acknowledgement of the request and the denial. It can be reasonably inferred the Sheriff could have made the decision to deny the document request well before the complaint was filed. According to Indiana Code § 5-14-3-9, a written request for a public record warrants a denial (if one is justified) in writing, with the statutory justification for withholding the record, as well as the name of the public official denying the record.

While the Sheriff eventually denied the records request in writing, this did not occur until after a formal complaint was filed with this Office. A reasonable amount of time had long since expired. This Opinion will not address the justification for the denials or their legality, but based on the information provided, the request warranted a written denial well before the complaint was filed.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Orange County Sheriff's Department has acted contrary to the APRA for failing to respond to a written request within a reasonable time.

Luke H. Britt

Public Access Counselor

Cc: Ms. Marilyn Tucker Fullen, Esq.